IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT KINGSHILL

HOTEL HOLDING CORPORATION,	)	**CIVIL NO. 319/2000**
d/b/a TAMARIND REEF HOTEL,	)	
Petitioner,	)	
	)	
vs.	)	**PETITION FOR WRIT OF REVIEW**
	)	
SONIA JACOBS DOW, Commissioner,	)	
VIRGIN ISLANDS DEPARTMENT OF LABOR,	)	
JEANNE BLACKWOOD, Asst. Director,	)	
DIVISION OF UNEMPLOYMENT INSURANCE,	)	
	)	
Respondents.	)	
	)	**NOT FOR PUBLICATION**

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CABRET, P.J.

MEMORANDUM OPINION
(October 24 2001)

THIS MATTER is before the Court on the Respondents' motion to have disputed unemployment contributions released from a court-ordered escrow fund and paid to the

Unemployment Trust Fund ("Unemployment Fund") and the petitioner's opposition. For the following reasons, the respondents' motion will be granted.

STATEMENT OF FACTS

On May 26, 2000, the Virgin Islands Employment Security Agency of the Department of Labor ("VIESA" or "Agency") notified Hotel Holding Corp. ("Hotel Holding" or "Petitioner") that its unemployment contribution rate had been assessed at 5.4 percent. This rate was retroactively applied to contributions for the first quarter of the current year (January 1 - March 31). During this period, petitioner claims it paid a contribution of .1 %, the rate in effect at the time. Petitioner argues that the retroactive application of this rate increase resulted in an additional assessment of $9,332.01 for the first quarter of the year.

Petitioner immediately sought a redetermination and, without holding a hearing on the matter, the Agency affirmed its rate assessment in a notice dated June 26, 2000. Petitioner then sought judicial review.

This Court granted a writ of review to determine whether VIESA acted properly in its determination and retroactive application of the petitioner's unemployment insurance contribution rate. The Court additionally ordered that the petitioner pay a bond for the disputed amounts to the clerk of the court, to be placed in an interest-bearing account, pursuant to Territorial Court Rule 15 (b). A subsequent order additionally allowed the petitioner to continue to pay into escrow any amounts, as they accrued, representing the difference between the assessment rate of .1 percent, which was in force at the time of the challenged determination, and the increased rate of 5.4 percent.

After ordering the parties to brief the issue, the Court held a hearing on September 21, 2001, to consider whether the court should continue to hold disputed unemployment insurance contributions deposited in escrow by the petitioner, or turn those funds over to VIESA. The Court now decides that issue.

DISCUSSION

Respondents urge that, as a matter of public policy, any unemployment contributions due must be paid to VIESA, for deposit into the Unemployment Fund, in accordance with the Federal Unemployment Tax Act ("FUTA").[1] Petitioner opposes release of the funds, contending the escrow account is not only proper under Territorial Court Rule 15 (b), but also necessary to protect its interest in those funds if successful in challenging the agency's determination of its unemployment contributions rate.

Territorial Court Rule 15 provides:

> Before granting the writ (of review) the Court *shall* require the petitioner to post a surety bond subject to its approval and in the amount to be fixed by the Court in order to ensure that the petitioner will obey the determination on or decision

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[1] FUTA is a comprehensive unemployment statute. FUTA provides substantial credits, in the form of a reduced contribution rate, to states which voluntarily adopt that unemployment scheme. *See* 26 U.S.C.A. § 3301 et. seq. States are taxed at a 6 percent rate; however, those states that voluntarily comply with FUTA's mandates -- which include a requirement that contributions be immediately deposited into a trust fund -- receive a substantially reduced tax rate, to 0.1 percent. *Id.* at §§ 3301, 3302. Respondents urge that this provision, and the considerable financial burden which would come to bear on the Virgin Islands for noncompliance with FUTA, preponderate in favor of judicial action that facilitates compliance. Thus, respondents urge that the funds should be released as a matter of public policy to avoid potential decertification of the Virgin Islands Unemployment Tax Act resulting from noncompliance with FUTA.

> sought to be reviewed and perform his obligations thereunder in case it is affirmed by the Court upon review.

Terr. Ct. R. 15 (b) (emphasis added). This language, Petitioner argues, mandates the Court to order that disputed funds be deposited with the Court during the pendency of judicial review and removes the judge's discretion from the process.[2] While the Court routinely applies Rule 15 in reviewing agency decisions involving disputed funds, the Court disagrees that doing so is required – or prudent – in this instance.

The Territorial Court Rules, developed by the Court after comment by members of the community and the bar, prescribe the rules governing the practice and procedure in this court. *See* Terr. Ct. R. 1. The Court enacted those rules pursuant to its statutory rulemaking authority, provided in Section 21 (c) of the Revised Organic Act of 1954 and Title 4, Section 76 of the Virgin Islands Code. As such, the court's rules, like administrative regulations, are the valid and binding laws governing procedures of the court. 2 NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION §§36.06, 36.03 (5th ed. 1991); *see also Tonkin v. Michael*, 9 V.I. 172, 182 (D.V.I. 1972).

However, while the court is mandated to follow its established rules governing procedures, the primary authority for enacting laws remains with the Legislature, and not the courts. *See* SUTHERLAND STAT. CONSTR. § 36.06. Thus, where there exists a conflict between

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[2] Petitioner additionally asserts that the goal of maintaining the Virgin Islands' compliance with FUTA is not a valid basis for granting the respondents' motion because, it asserts, FUTA is not a mandatory statute. Because the Court relies on local law to resolve the issue presented, it will reserve judgment on the merits of the respondents'.arguments that the Virgin Islands is bound by FUTA.

a court rule and a statute, the laws enacted by the Legislature must take precedence over the administrative rules of the court. *Id.* Additionally, the court's rules may not be applied in a manner that is inconsistent with the laws of the Virgin Islands, where the Legislature has spoken on the issue. *Id.*

In this instance, the Virgin Islands Legislature has so spoken, by specifically prohibiting the Court from applying any judicial process that hinders VIESA's ability to immediately collect unemployment contributions which it deems due. The applicable provision, contained within the Virgin Islands Unemployment Tax Act ("UTA"), states:

> No suit (including an action for a declaratory judgment) shall be maintained and no writ or process shall be issued by any court of the Virgin Islands which has the **purpose or effect of restraining, delaying or forestalling** the collection of any contributions or payments in lieu of contributions under this chapter **or substituting any collection procedure** for those prescribed by this chapter.

Virgin Islands Code Ann. tit. 24, § 309 (b)(4) (1997) (emphasis added). Federal statutes, in language which substantially mirrors that of the local statute, similarly prohibit courts from interfering with the states' ability to immediately collect or enforce taxes. *See* 28 U.S.C.A. § 1341[3] (Tax Injunction Act) (prohibiting federal judicial intervention in the collection of state taxes); 26 U.S.C.A. § 7421 (a)[4] (Anti-Injunction Act) (limiting judicial interference in the collection of federal taxes).

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[3] "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

[4] ". . . [N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

These statutes evince a policy against interfering with a government's ability to collect revenues and administer its own finances, and against any judicial action which tends to obscure the separation of powers in that regard. *See, e.g. Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522, 101 S.Ct. 1221, 1233, 67 L.Ed.2d 464 (1981) (discussing the rationale underlying the federal tax injunction statutes); *Behe v. Chester County Bd. of Assessment Appeals*, 952 F.2d 66, 68 (3d Cir. 1991); *Independent Baptist Church v. Tennessee*, 468 F. Supp. 71, 75 (E.D. Tenn. 1978).

Courts reviewing judicial actions that directly or indirectly stymie a state's collection of revenues have deemed such judicial processes proper only where there exists no adequate remedy for the subsequent recovery of any taxes improperly collected or paid under protest. See *Independent Baptist*, 468 F. Supp. at 74 (citing *Ford Motor Credit Co. v. Louisiana Tax Commissioner*, 440 F.2d 675 (5th Cir. 1971)); *see also Rosewell*, 450 U.S. at 512.

The recourse available to one challenging a tax assessment need not be perfect or the best remedy, but must present only an adequate, speedy and efficient method of recovering funds paid under protest. *See Rosewell, supra*; *Independent Baptist, supra* at 75 (the availability of a civil suit and the ability to pay under protest is an adequate remedy). Thus, an aggrieved taxpayers' only recourse while challenging an assessment is to pay the disputed amounts and seek a refund after favorable resolution of the dispute.

Indeed, local law provides such a remedy to an aggrieved employer, through Title 24, Section 309 (d) (1), which provides that an employer may apply to the agency for a refund of any contributions collected erroneously. *See* 24 V.I.C. 309 (d)(1). That statute also establishes an appellate process within the agency in the event a refund is initially denied. *Id.* Additionally, an employer may resort to a separate civil action to recover any such sums. These administrative and civil remedies are sufficiently adequate to preclude judicial withholding of the funds in dispute here.

The adequacy of these remedies is underscored by the fact that the petitioner stands to lose absolutely <u>nothing</u> if the funds are released, balanced against the potentially tremendous losses to the Virgin Islands – and, indirectly, all employers who will have to absorb those losses – if the funds are not released.[5] As noted at the hearing on this matter, VIESA stands to lose an estimated $ 7 million in tax credits if it falls out of compliance with FUTA. The Court cannot ignore the severe consequences that would be visited on the Respondents, particularly given the absence of prejudice to the Petitioner if those funds are released to VIESA. More importantly, the Court cannot ignore Section 309 of the Unemployment Tax Act, whose full import is to prohibit the kind of judicial action at issue here.

CONCLUSION

Continuing to hold the disputed unemployment funds in escrow will unnecessarily and severely thwart the agency's ability to collect revenues and maintain its benefits under FUTA. Moreover, doing so is prohibited by Title 24, Section 309 of the Virgin Islands Code and the

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[5] Moreover, Territorial Court Rule 15 (b) was clearly intended to protect the agency's interests, by requiring those challenging an agency decision to post bonds in the amount of the disputed assessment, thus ensuring the availability of funds and the agency's ability to collect those funds in the event the court resolves the dispute in its favor.

policies underlying that statute. Finally, the Court concludes that the Petitioner's ability to seek a refund or file a civil action to recover any contributions wrongfully assessed adequately protects its interests. Accordingly, the disputed unemployment contributions now being held in escrow will be rcleased to the agency, notwithstanding Territorial Court Rule 15 (b). An appropriate order will issue.

MARIA M. CABRET
Presiding Judge

ATTEST:
DENISE D. ABRAMSEN
Clerk of the Court
By: ______________
Deputy Clerk
Dated: 10/25/01